

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re T.S. et al., Persons Coming Under  
the Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.S.,

Defendant and Appellant.

E066743 & E066759

(Super.Ct.Nos. J262341, J262342  
& J262343)

OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander,  
Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Jean-Rene Basle, County Counsel, and Dawn Martin, Deputy County Counsel, for  
Plaintiff and Respondent.

# I

## INTRODUCTION<sup>1</sup>

S.S. is the mother of three children—E.S., A.S., and T.S.—born in 2007, 2010, and 2012. After a second referral to CFS<sup>2</sup> involving injuries to the youngest child, T.S., the children were placed with their father, D.S., who was seeking custody of the children through family law court.

Mother's boyfriend, D.O., claimed T.S. had been injured by a neighbor's child hitting her with a Barbie doll while mother was at work. The forensic expert's opinion was that T.S.'s injuries resulted from physical abuse. After the six-month review hearing, the juvenile dependency court found mother had failed to benefit from services and awarded sole physical custody to father. Mother now challenges the jurisdiction and disposition orders along with the later custody orders made by the juvenile dependency court.

On appeal, respondent argues mother waived any challenge to the lower court's jurisdiction. Additionally, the trial court had no duty to advise mother of her right to appeal the jurisdictional findings. Further, ample evidence supports the jurisdictional allegations that T.S. sustained injuries while in mother's care and custody. Therefore, the juvenile dependency court did not abuse its discretion removing the children from mother and granting sole custody to D.S.

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> San Bernardino Department of Children and Family Services

We agree with respondent. Even if mother did not waive various issues, we affirm the judgment.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

#### *Detention*

In October 2015, CFS filed original dependency petitions involving all three children. According to a referral, on September 17, 2015, when D.S. picked up the children from mother's home, T.S. had a bruised right cheek, red and yellow in color. Mother told D.S. the injury had occurred while her boyfriend, D.O, was visiting a neighbor with T.S. and an 18-month-old girl hit her with a Barbie doll. However, T.S. had told father that D.O. had hit her while she "going potty." A detective reviewed a photograph and thought the mark on T.S.'s face resembled a hand print. CFS had received a previous referral about T.S. in May 2015 when she had red marks on her arm and face and mother said A.S. had hit her. D.S. was seeking physical custody of the children in the family law court.

The other two children, A.S. and E.S., denied being subjected to any physical abuse or witnessing any domestic violence between mother and D.O. E.S. stated D.O. had spanked T.S. when she soiled herself. Mother said she was unaware of D.O. ever spanking T.S. and still maintained that another child struck T.S. with a Barbie doll.

On September 29, 2015, mother signed a declaration temporarily releasing the children to CFS, and they were placed with father. At the detention hearing, the children were temporarily detained and placed with father.

### *Jurisdiction/Disposition*

In the jurisdiction/disposition report, CFS recommended that the allegations of domestic abuse between the parents be dismissed due to insufficient evidence but that the children should remain with D.S. with maintenance services and reunification services provided to mother.

On October 10, 2015, mother confirmed to the social worker that she had moved out of D.O.'s home and she was living with her mother. Mother was skeptical about the cause and seriousness of T.S.'s injuries. She had relied on D.O. to babysit the children while she worked. However, she planned to enroll the children in YMCA day care upon their return to her. She did not physically discipline the children and instead used timeouts and verbal discipline. Mother believed T.S. was struggling with toilet training because the parents' methods were inconsistent.

D.S. initially was not concerned about T.S.'s injuries until the child made troubling comments about D.O. D.S. did not know if D.O. had hurt T.S. D.S. was adamant that he did not want to keep the children away from mother.

A.S., age five, told the social worker that he wanted to live with mother because her home was "more fun." He said his mother used timeouts, not physical discipline, when the children misbehaved. E.S., age eight, told the social worker that A.S. said T.S. was hurt in an argument about a Barbie doll. E.S. thought T.S. was crying because she was being spanked but he never saw her being physically punished. Both parents used timeouts for discipline. E.S. never saw domestic violence. He liked D.O. because he took them to the bus stop and picked them up after school.

D.O. maintained that T.S.'s injuries were caused by the neighbor's daughter. D.O. did not want to be in the middle of the parents' custody dispute so he decided not to supervise the children anymore. The neighbor agreed T.S. was hurt when he and D.O. were playing video games while the children were in another room watching cartoons. The neighbor admitted he did not trim his daughter's fingernails and she was physically aggressive when her toys were taken away. The neighbor trusted D.O. with children.

Because the cause of T.S.'s injuries was unclear, the social worker recommended family reunification services. In visits, the children were happy to be with mother and cried when mother left.

At the jurisdiction/disposition hearing, the matter was referred to mediation. Pursuant to the mediation report, mother submitted on the allegations that T.S. had sustained injuries while in mother's care and custody. Mother was willing to accept a case plan but she still contested the disposition.

Dr. Young, a forensic expert, explained that T.S.'s injuries were nonaccidental and indicated child abuse because the injuries were patterned, repetitive, and unwitnessed, which are common features of abuse. When a child is struck forcefully with a hand, the pattern of injury is a negative impression of the fingers. Ruptured blood vessels can commonly be misinterpreted as "scratches."

At the contested jurisdiction/disposition hearing on December 22, 2015, based on the mediation agreement, the juvenile dependency court sustained the section 300 petition allegations that T.S. had sustained injuries while in mother's care. As to disposition, the court referred to Dr. Young's opinion that T.S.'s injuries were consistent with being

slapped and were not the type of injury inflicted by another child. The court expressed concern that this was the second incident involving T.S. being injured. The court ordered family reunification services for mother and placed the children in father's care.

#### *Six-Month Review*

On June 1, 2016, CFS reported that A.S. and E.S. had said D.O. hit them and was "very mean" and they did not want to live with him. Father said the children came home from their visit with mother complaining they were hungry and mother did not feed them. The children made inconsistent statements about whether they were fed and whether D.O. was present during the visit. Mother and the maternal grandparents maintained they fed the children. Mother claimed father was coaching the children to avoid paying child support. The maternal grandparents said D.O. was their friend and could visit their home in spite of the court order against contact with the children. Mother denied she was involved with D.O. The social worker informed mother that further visits would take place at the CFS office.

CFS recommended that the children remain in father's home and the juvenile dependency cases and family reunification services be dismissed. The children had adjusted well to living with father. Father had completed his case plan and participated in family therapy. Mother had also attended therapy and participated in some parenting classes while missing several sessions. She attended some counseling sessions but missed her last appointment. Mother continued to deny any wrongdoing and she did not accept responsibility for the children being in danger. The social worker was concerned that mother was evasive about D.O. and not worried about T.S.'s injuries. Mother

expressed anger about D.S. coaching the children and she believed CFS had retaliated against her for suing the county.

On June 2, 2016, when mother visited the children, she told them she was angry and not willing to haul their toys back and forth. She blamed them for visits being changed to the CFS office. For the first 30 minutes of the visit, she sat sullenly without interacting. Finally, mother paid attention to T.S. but the boys were busy playing independently and together. On June 8, 2016, mother missed her visit because of car trouble.

On July 13, 2016, CFS received a referral about T.S. being sexually abused by D.O. T.S repeatedly stated he “touched my pee.” She drew pictures and used a doll to illustrate. Mother disagreed with T.S. being interviewed or having an examination. Mother denied any abuse and believed T.S. was coached. Mother claimed she did not have D.O.’s contact information but D.O. came to the CFS office and denied ever touching T.S. He admitted having a prison record but not involving crimes against children. He blamed D.S. and said the children told him that the stepmother was mean to them.

On August 29, 2016, at the contested six-month review hearing, the social worker testified that mother had completed her case plan but not benefited from services. Mother was evasive about her relationship with D.O. The social worker did not believe D.S. was coaching the children. Mother refused to acknowledge the children had been harmed and was angry during visits. CFS continued to recommend sole physical and legal custody to father.

The court ordered sole physical custody to D.S. and joint legal custody to both parents and advised cooperation between them. The court ordered mother to have supervised weekly visitation and phone contact twice per week. The court terminated jurisdiction and issued the family law order.

### III

#### DISCUSSION

Most of mother's appeal challenges the jurisdictional findings although the notice of appeal specified that she was only appealing the dispositional orders. Because mother has not specified each particular order being appealed (Cal. Rules of Court, rule 8.100(a)(2)), she has waived her challenge to the jurisdictional findings. Even absent waiver, mother agreed to the jurisdictional allegations at mediation and submitted on the jurisdictional findings as to T.S. Therefore the court sustained the jurisdictional allegations and had no duty to advise mother of her appellate rights concerning jurisdiction. (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1235-1236.)

Even if mother's jurisdictional challenge was not waived, substantial evidence supports the jurisdictional allegations. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) We must determine whether "there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value" to support jurisdiction. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) The trial court's judgment is presumed correct. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267.) All conflicts are resolved in favor of the judgment and all legitimate inferences are indulged in to uphold the juvenile court's determinations. (*Rocco M.*, at p. 820.)



The agency has the burden of establishing that the basis for jurisdiction exists at the time of the adjudication hearing. (*In re Chantal S.* (1996) 13 Cal.4th 196, 210; *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820.) “In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1026.)

On appeal, mother tries to discredit the evidence of T.S.’s injuries. But these arguments have no bearing on the jurisdictional allegations. The only dispute involved is how T.S. was injured while in mother’s care. The explanation that T.S. was struck by a neighbor’s daughter with a Barbie doll was unequivocally rejected by the forensic expert who noted that the injuries were clearly consistent with physical abuse. Based on the foregoing, substantial evidence supports the jurisdictional allegations in this case.

Mother also challenges the dispositional order removing the children from her care. We hold the juvenile court did not abuse its discretion in ordering the children removed from mother’s care: “The juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) In reviewing an order for abuse of discretion, we ““must consider all the evidence, draw all reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial

court's ruling. [Citation.] The precise test is whether any rational trier of fact could conclude that the trial court order advanced the best interests of the child.'” (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) “The trial court is accorded wide discretion and its determination will not be disturbed on appeal absent ‘a manifest showing of abuse.’ [Citation.]” (*Ibid.*)

Mother argues the children should not have been removed from her care because she was living with her mother and planned to enroll the children in a YMCA daycare program. Also mother had not injured T.S. but she was willing to admit that T.S. sustained injuries while in her care; mother had participated in services; the older children said they wanted to return to mother; and she was appropriate during visits. However, mother does not acknowledge the court relied on Dr. Young's opinion that T.S.'s injuries were consistent with being slapped, and not accidental, and this was the second incident involving T.S. being injured while in mother's care. These factors justified the court ordering family reunification services for mother and placing the children in father's care. The disposition order constituted a reasonable exercise of discretion rationally tailored to advancing the children's best interests by protecting them.

Lastly, mother contends that CFS failed to meet its burden under section 366.21, subdivision (e), to show that return of the children to her home would create a substantial risk of detriment to their physical or emotional well-being. She argues that the children enjoyed her visits and she completed her case plan. She continues to assert that the children were coached by father.

The social worker testified that, in order for mother to show her ability to provide for the children and protect them, mother would have to acknowledge that they were harmed and by whom. Mother was evasive about her relationship with D.O. She continued to deny the physical abuse and the possible sexual abuse. Therefore, the court properly determined under section 366.21, subdivision (e), that returning the children to her home would create a substantial risk of detriment to their physical or emotional well-being and properly ordered sole physical custody to D.S. Mother could also seek another custody order in the family law court. (§ 304.)

#### IV

#### DISPOSITION

We reject mother's appeal and affirm the findings and orders of the juvenile court.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON

J.

We concur:

RAMIREZ

P. J.

FIELDS

J.